

SFTLA Damages Seminar: Loss of a Child

I. Introduction:

- A. The problem: The loss of a child less than one year old.
 - Child that cannot talk/walk.
 - Too early to know how he/she will develop.
 - A completely noneconomic damage analysis (my demo of an illustration of significance of the loss).

- B. Determining monetary value of the loss of life: the focus is the relationship.
 - 1. Compare to things that society puts great value on that are nowhere near as important as a human life i.e. sports (salaries, homerun balls etc.), entertainment (actors etc.).
 - 2. Illustrations of how society actually values life:
 - Desert Storm: instructions to ditch \$10 million planes to save life of pilot.
 - Rescues at sea and in the mountains.
 - Recent rescue attempts at the WTC to try to find anyone alive.
 - 3. Life is not cheap in our society; it is valuable. That sets us apart.

- C. Always give a number or a range and do enough to illustrate why in this case the loss is so significant that the jury will not be offended by the size of the numbers.

- D. Challenge the feeling often expressed during voir dire that money cannot bring back the child. True...I wish it could but that is not why we are here. We are here as judges to do justice. This truth that money cannot bring back people from the dead, should be no excuse for not following the law and adequately compensating the parents for their loss. Otherwise, they get partial justice and they are entitled to full justice. Partial justice is no justice at all.

II. The Significance of the Loss of a Child: Demonstration of Argument.

- A. No way to describe it: When you lose a spouse, there is a name for it, you are a widow or widower. When you lose your parents, there is a name for it, you are an orphan. When lose a child, there is no name for it....maybe that is because it is too awful to name.

- B. It's Unnatural: Because it is against the natural order of things. Children are not supposed to die before their parents.

- C. It is life's greatest tragedy.
 - 1. Something you never get over. The younger you are the worse it is.
 - 2. Something that is always there like a scar. Other children remind you of your loss.
 - 3. Something that haunts you when it's quiet or you are alone.

At the very best, a parent can only learn to cope and deal with the loss.

D. Why is the loss of a baby so significant?

1. Parental guilt: you let down an innocent, dependent being. Innocence is what makes childhood so special. It is agonizing enough to see your child gradually lose innocence. How about dealing with that prematurely? You have lost someone who was completely, utterly innocent, trusting and dependant on parents. You ask: Why couldn't I protect her? Why couldn't I have saved her? Why couldn't it have been me?

2. Loss of part of yourself. Child is part of you and is a reflection of you and your spouse. We all live through our children to some extent. We share his successes and his failures. So, when you lose a child you cannot stop wondering: How would she look today? What would she be doing today? In our case her mother wanted her to "be somebody". What would she have to say?

3. You lose an important part of your future when you lose a child. Remember: a child is a living message we send to a time we will never see. A legacy... A living message about her parents and who they were and what they were like. An impt. link in establishing family history. When families get together they talk about their relatives and tell stories about them. More than a photo or a name on a grave stone.

4. Each child is unique: You cannot minimize the loss by stating that the couple is capable of having another child. You cannot replace the lost child. In fact, oftentimes a new child has many of the characteristics of the first and is a reminder of the loss.

5. The parents are cheated out of experiencing and sharing the sweetness of life: What do I mean? Dad, you are a complete embarassment? Can you let me out a block from school? Mom, I got straight A's! I scored a goal! I am in love. I am getting married. I am going to have a child. I love you, dad.

6. The younger the child, the longer the period of loss. The defense suggests that since a baby was involved the relationship could not have been that substantial. Well...the relationship started in utero (give examples) and proof of the depth of it is in the baby pictures I am now showing you on powerpoint. Look into Z's eyes and you will see. You see a very happy, content baby who is loved.